(i) the appellants are the purchasers and assignees of Selco's interest in the five salvage claims;

(ii) the respondents are also purchasers and assignees of Selco's interest in the five salvage claims, and that the respondents' rights in respect of the salvage claims of 'M Ceyhan', 'Kypros', 'Amethyst' and 'Chemical Venture' have priority over the rights of the appellants in respect of such salvage claims; and that in respect of the salvage claim of 'Tjigombong 1' the appellants have priority over the respondents in respect of the rights of Selco to the salvage agreement of 'Tjigombong 1' and the respondents have priority over the appellants in respect of their rights in the guarantee issued by Asia Insurance Co Ltd dated 22 November 1984 in respect of 'Tjigombong 1'.

The learned judge disallowed costs to the appellants in respect of their claim and ordered costs to be paid to the respondents in respect of their counterclaim. The appellants appealed against that part of the decision of the learned judge which determined that the respondents were purchasers and assignees of the interest of Selco in the five salvage claims and that the rights of the respondents had priority over the rights of the appellants, and also against that part of the decision on costs. At the conclusion of the hearing of the appeal, we allowed it with costs here and below and made an order in terms of the originating summons.

The point involved in this appeal is a very narrow one; it turned on the construction of the 7 November letter in relation to the offer contained in the 14 October letter. There was no dispute that the appellants on or about 23 October 1985 did purchase Selco's interest in the five salvage claims. Therefore, in the absence of any competing claim, the appellants were solely entitled to what they acquired. The respondents, however, claimed that on 20 November 1985, they also purchased Selco's interest in the five salvage claims; that at the time of their purchase they had no notice of the appellants' interest; that immediately thereafter they gave the requisite notices to the parties concerned, and that therefore their claim ranked ahead of the appellants'. The immediate question, indeed, as it turned out, the only question in this appeal, was whether the respondents did purchase Selco's interest in the five salvage claims as alleged by them.

As we have said, Selco by the 14 October letter offered to sell to the respondents salvage claims in respect of nine vessels, which included the five salvage claims. Soon thereafter, on or before 7 November 1985 the respondents purchased Selco's salvage claims of four vessels, but not the five salvage claims. It is, however, the case of the respondents that the offer to sell the five salvage claims then still remained open and available for acceptance by them, and that they finally accepted the offer on 20 November 1985. Unfortunately, there was an insurmountable difficulty in the way, and that was the 7 November letter written by Selco to the respondents, which contained the vital paragraph, namely, 'this letter will supersede our previous letter reference no A/DW dated 14 October 1985', that is, the 14 October letter. On the true construction of the 7 November letter the only meaning one can give to this paragraph is that the 14 October letter had been replaced or substituted by the 7 November letter and the effect of that is that any offer contained in the 14 October letter which had not been accepted had been withdrawn. In our opinion, Selco had, on 7 November 1985 in clear and unequivocal terms, withdrawn or cancelled the offer contained in the 14 October letter and thenceforth there was no offer for the sale of the five salvage claims which remained open and available for acceptance by the respondent on 20 November 1985 or any other date. Hence, the case of the respondents that they accepted Selco's offer as contained in the 14 October letter fell to the ground. In the result, their claims failed, and we so held.

Appeal allowed.

Solicitors: *Allen & Gledhill*; *Drew & Napier*.

Reported by *Ng Sheau Jiuan*

Chew Kia Ngee v Singapore Society of Accountants

HIGH COURT (SINGAPORE) – DISTRICT COURT APPEAL NO 60 OF 1987
THEAN J
28 DECEMBER 1988

Professions – Accountants – Auditor signing partially completed statutory form and leaving instructions to subordinate to complete form in accordance with working draft before sending to Monetary Authority of Singapore (MAS) – Administrative slip-up resulting in partially completed form being sent to MAS – Letter of complaint by MAS to Singapore Society of Accountants – Whether auditor's act amounted to act discreditable to an accountant – Whether delegation to subordinate to complete form is reckless – Accountants Act (Cap 2, 1985 Ed), s 33(1)(b)

Professions – Accountants – Auditor signing partially completed statutory form and leaving instructions to subordinate to complete form in accordance with working draft before sending to Monetary Authority of Singapore (MAS) – Administrative slip-up resulting in partially completed form being sent to MAS – Letter of complaint by MAS to Singapore Society of Accountants – Disciplinary committee's finding that auditor's act amounted to act discreditable to an accountant – Auditor suspended from practice for five years – Whether excessive – Maximum penalty of $500 should be sufficient and appropriate – Accountants Act (Cap 2, 1985 Ed), s 33(3)(b) & (c)

Civil Procedure – Costs – Appeal by auditor to High Court against disciplinary committee's finding that he committed act discreditable to an accountant – Appeal allowed – No order made as to costs of appeal – Reasons for

The appellant is a partner in C, who are the auditors of a company S. The appellant is the partner in charge of the audit of S. On 9 December 1986, S sent to the appellant Forms 20 and 21 prescribed by the Securities Industry Regulations 1986 with a request that these forms be urgently completed as S was already late in submitting them to the Monetary Authority of Singapore ('MAS'). Form 20 was duly completed and the appellant signed it. As for Form 21, D, an audit manager in C, made a photocopy of the form and completed that copy manually, based on a similar form submitted to the MAS the preceding year, as the activities of S had not changed since then. That copy, as completed by D, was used as a working draft in both D's and the appellant's joint review of Form 21. As the appellant was leaving soon for a meeting, he signed Form 21 and gave instructions to D to ensure that the form was completed in accordance with the draft before it was released. At that point, Form 21 had been partially completed and the names of S and C and the date had already been inserted. Subsequently D also left for an engagement and both forms were left on his table. In the meantime, S telephoned the appellant's office making inquiry for the forms. D's secretary, who saw the forms on D's table and that they had been signed, took the forms and sent them out without realizing that Form 21 had yet to be completed. In consequence, Form 21, partially completed, found its way to the MAS.

Subsequently, MAS wrote a letter to C reprimanding the firm for failing 'to bring the necessary skills, care and diligence to bear on the audit of S's accounts ...' and forwarded a copy of the letter to the Singapore Society of Accountants ('the society'). In consequence, an inquiry was held by the disciplinary committee ('the committee') and it found that the charge against the appellant, that he signed the auditor's report without completing the report as was required by the Securities Industry Act (Cap 289, 1985 Ed), had been proved. The committee held that what the appellant did was 'most discreditable to an accountant' within the meaning of s 33(1)(b) of the Accountants Act (Cap 2, 1985 Ed) ('the Act') and ordered that he be suspended from practice for a period of five years. The appellant appealed to the High Court.

Held, allowing the appeal:

(1) The committee appeared to have based their finding essentially on the fact that the appellant signed Form 21 without completing it, leaving it to a junior audit manager to complete it. The committee did not really take into consideration all the relevant circumstances in which the partially completed Form 21 was signed by the appellant and left with D. The committee gave undue emphasis solely on the fact that the appellant signed a form 'in blank' in advance.

(2) This is not a case of an auditor 'signing a report in blank'. Nor is it one where the appellant as an auditor was seeking the assistance of his staff 'to conceal the fact that the appellant had signed the auditors' report in blank'. The committee was in error in their conclusion.

(3) Form 21 is an important form to be submitted to MAS but it is by no means such a complicated form that the completion of it cannot be properly delegated, in particular in this case, to an audit manager who is conversant with the accounting records of S. Clearly, it is not a reckless delegation or one which a reasonable accountant will not allow.

(4) An act or default discreditable to an accountant includes any conduct which would be reasonably regarded by other accountants of good professional competence as calculated to destroy or lower public confidence in that accountant, or lower the credit or standing of the accountant in his professional capacity. On the basis of the evidence in the instant case, it could not be said that what the appellant did would destroy or lower public confidence in him as an accountant or injure or lower his credit or standing as an accountant. What the appellant did fell short of the degree of culpability attached to an act or default discreditable to an accountant.

(5) Even if the conclusion that the appellant was guilty of an act or default discreditable to an accountant is correct, the punishment meted out to him is manifestly excessive. By any standard, the maximum suspension of five years on the appellant under s 33(3)(b) of the Act is totally disproportionate to his conduct. The imposition of a maximum penalty of $500 under s 33(3)(c) would be sufficient and appropriate.

(6) There should be no order as to costs. The society has to discharge its duty under the Act and in so doing it has not acted improperly or vexatiously as against the appellant. The committee at their inquiry had made a finding and given their decision against the appellant. Upon appeal by the appellant, it is incumbent on the society to resist the appeal and present its argument to the court to assist the court in arriving at its decision. Having regard to all the circumstances, no order as to costs here and below should be given.

[*Editorial Note*: The respondent has appealed to the Court of Appeal vide Civil Appeal No 9 of 1989.]

Cases referred to

1 *Felix* v *General Dental Council* [1960] 2 All ER 391 (refd)
2 *Mercer* v *Pharmacy Board of Victoria* [1968] VR 72 (folld)
3 *Smith* v *The Royal College of Veterinary Surgeons* Privy Council Appeal No 27 of 1979 (not reported) (distd)

Legislation referred to

Accountants Act (Cap 2, 1985 Ed), ss 32(3), 33(1)(b), (3)(b) & (c), 34(2)
Securities Industry Regulations 1986 Forms 20, 21

David Oliver QC (*Helen Yeo (Ms)* with him) for the appellant.

Lee Han Yang (*Miss Chui Yin Yen* with him) for the respondent.

Cur Adv Vult

Thean J: This is an appeal from the decision of the Disciplinary Committee ('the committee') of the Singapore Society of Accountants ('the society') in which the committee found the appellant guilty of an act discreditable to an accountant and ordered that he be suspended from practice for a period of five years.

The appellant is a public accountant of Singapore and has been one since 10 June 1978. He is a partner of the firm of Coopers & Lybrand ('Coopers'), who are the auditors of the company Shearson Lehman Brothers Pte Ltd ('Shearson'). The appellant is the partner in charge of the audit of Shearson.

Shearson is a dealer in securities within the meaning of the Securities Industry Act but not a member of the Stock Exchange of Singapore Ltd. Its dealing in securities (should it wish to deal) is limited and governed by the terms of the licence issued to it by the Monetary Authority of Singapore ('MAS'). However, Shearson does not trade or deal in securities; its activities are confined to providing administrative and technical support services to its holding company in New York; it would transmit or channel to its holding company purchase or sale orders received from customers in this region and would transmit to the customers confirmation of the orders received by its holding company. It would receive from its holding company monthly statements of accounts which it would then forward to the customers, and periodically it would, upon receipt of information on markets in America and Europe, transmit the same to the customers. As Shearson itself does not really deal in securities (in the ordinary sense) in Singapore, it does not maintain any accounts such as trust accounts, margin accounts, records of securities and clients' ledgers. Nonetheless, its activities are governed by the Securities Industry Act and the Securities Industry Regulations 1986, in so far as they are applicable.

On the morning of 9 December 1986, Shearson sent to the appellant Forms 20 and 21 prescribed by the Securities Industry Regulations 1986 with a request that these forms be urgently completed as Shearson was already late in submitting them to MAS. Douglas Condon, the audit manager of the appellant, first attended to the forms and subsequently the appellant reviewed them with Condon. Form 20, except for a couple of errors, which were corrected, was found to be in order and the appellant signed it. As for Form 21 Condon had made a photocopy thereof and completed that copy manually based on a similar form submitted to the MAS the preceding year, as the activities of Shearson had not changed since then. That copy as completed by Condon was used as a working draft in their joint review of Form 21. As the appellant was leaving soon for a meeting in Jurong, he signed Form 21 and gave instructions to Condon to ensure that the form was completed in accordance with the draft before it was released. At that point Form 21 had been partially completed. The names of Shearson and Coopers and the date had already been inserted. That form has five paragaphs, of which the first paragraph is a statement that the auditors have inspected the dealer's licence and noted the conditions or restrictions thereon, and the remaining four paragraphs require to be dealt with or completed. Paragraphs 4 and 5 of the form had been completed while paras 2 and 3 had not been dealt with and remained unanswered. Soon after the appellant had reviewed the forms with Condon, he left for the meeting. Unfortunately, Condon also left for an engagement, and both the forms were left on his table. In the meantime, Shearson telephoned the appellant's office making inquiry for the forms. Condon's secretary, who saw the forms on Condon's table and that they had been signed, took the forms and sent them out without realizing that Form 21 had yet to be completed. In consequence, Form 21, partially completed, found its way to the office of MAS.

Subsequently, the appellant was called upon by MAS to explain, inter alia, the reason for submitting a partially completed Form 21. An explanation was given by the appellant in the form of a lengthy letter dated 16 January 1987. MAS, however, did not appear to have accepted the explanation, and in a letter dated 5 March 1987 written to the managing partner of Coopers, severely reprimanded the firm for failing 'to bring the necessary skills, care and diligence to bear on the audit of Shearson's accounts relating to the year ended 31 December 1985', and required the firm to enumerate the steps that they proposed to take in future to ensure that all the relevant requirements under the Securities Industry Act and the Regulations would be complied with. A copy of that letter was forwarded to the Singapore Society of Accountants, presumably, as a complaint against the appellant, being the partner in charge of the audit of Shearson. In consequence, the registrar of the society laid the complaint or matter before the investigation committee pursuant to the then s 33(3) of the Accountants Act (Cap 212, 1970 Ed), now s 32(3) of the Accountants Act (Cap 2, 1985 Ed) ('the Act'). The investigation committee investigated the matter and determined that it should be referred to the disciplinary committee. An inquiry was then held by the disciplinary committee.

Before the committee the charge against the appellant was as follows:

> You, Chew Kia Ngee, PAS, are charged that:
>
> (a) On or about 9 December 1986, you signed an auditor's report without completing the said report as was required by the Securities Industry Act (Cap 289) and you submitted or caused to be submitted such report to the Monetary Authority of Singapore ('the Authority').
>
> (b) On or about 9 December 1986, you submitted on behalf of your client to the Monetary Authority of Singapore a statement of assets and liabilities, adjusted net capital and aggregate indebtedness on a form which you knew or should have known was an incorrect form.
>
> (c) On or about 12 January 1987, you failed to comment on several items contained in Form 21 when you resubmitted such form to the Authority.
>
> You have thereby committed an act or default discreditable to an accountant within s 33(1)(b) of the Accountants Act (Cap 2, 1985 Ed).

There was, in effect, only one charge against the appellant but the charge involved three acts or defaults. This was unequivocally stated by counsel for the society before the committee. At the conclusion of the inquiry, the

committee accepted the explanation of the appellant in respect of the act or default described in (b); and as for that in (c), the committee found that the appellant could have commented on certain items contained in Form 21 and that he should have exercised greater care in completing such form and that his failure to do so could amount to professional negligence, but that was not the charge against the appellant. In other words, by implication, the committee found that in relation to the acts or defaults described in (b) and (c) of the charge the appellant had not committed any act or default discreditable to an accountant within the meaning of s 33(1)(b) of the Act. As for the act or default described in para (a) the committee found that the charge had been proved and that what the appellant did was 'most discreditable to an accountant' and ordered that he be suspended from practice for a period of five years and further ordered him to pay all costs and expenses of and incidental to the inquiry held by the committee and the investigation held by the investigation committee.

Against that decision this appeal is now brought. Under s 34(2) of the Act, the procedure governing such an appeal is the same as that for appeals to the High Court from the decisions of District Courts in civil matters. Like an appeal from the District Courts, this appeal is in the nature of a re-hearing and the same principles apply as are applicable to an appeal to the High Court against the decision of the District Court. The question before me is whether, in relation to the matter complained of against the appellant, on the evidence before the committee, the appellant has been guilty of an act or default discreditable to an accountant within the meaning of s 33(1)(b) of the Act. It is a question of mixed fact and law: see *Felix* v *General Dental Council*[1] at p 397.

The evidence adduced before the committee was not in serious dispute. Mr Tan Kim Kway, an officer of MAS, gave evidence on behalf of the society, as it was he who lodged the complaint against the appellant to the society. His evidence, so far as relevant, is this. He said that Form 21 was one of the most important forms prescribed by the Securities Industry Regulations, and he went through the form as follows; he said that vis-à-vis Shearson, sub-paragraphs (a)-(h) of para 2 were not applicable, that sub-paragraphs (c), (d), (e), (f), (j) and (k) of para 3 were also not applicable, and save for these the other parts of the form were applicable and should be completed. He accepted that para 4 had been completed, but as for para 5 he said, '(5) it's difficult to see what is made of this particular answer here ...'. On looking at para 5, I note that this paragaph was not very neatly or tidily completed; but completed it was. I do not find any doubt which could be entertained in respect thereof; nor do I have any difficulty in understanding it. Having dealt with these paragraphs, Mr Tan then continued and said, 'Without a properly completed form, it is difficult for us to determine whether the dealer's licence should be renewed. And it is also difficult for the Authority to supervise the dealer efficiently and to ensure that the clients' money will always be safeguarded.' This assertion of Mr Tan is, with respect, a generalization and somewhat exaggerated. I have two observations. First, notwithstanding the partially completed Form 21 submitted, the licence of Shearson was renewed and issued on 3 January 1987. Secondly, it is too simplistic to say that 'efficient' supervision of a dealer and safeguarding of clients' money can really be so dependent on Form 21. Be that as it may, it is accepted that Form 21 is an important form prescribed by the Regulations, and I think that it is one of the forms relied upon by MAS (probably in some cases and not in all cases) in considering whether or not to issue and renew a dealer's licence.

The appellant himself gave evidence. He said that on 9 December 1986, Shearson sent to his office Form 20 for certification and verification and also Form 21 for completion. As these forms were already late for submission to MAS a request was made that the appellant's firm should check and certify them as quickly as possible. Upon receipt, Douglas Condon proceeded to check and verify Form 20, and spotted a couple of errors and appropriate corrections were then made. Having done that, Condon proceeded to fill up manually a photocopy of a blank Form 21 as a working draft based on a similar Form 21 which was submitted to MAS the previous year. Condon also wrote on the photocopy an additional paragraph to the effect that paras 2 and 3 (of Form 21) were not applicable as Shearson did not deal in securities in Singapore and its operation was merely one of provision of support services to its related corporations. Thereafter, Condon took the forms to the appellant who then reviewed Form 20 with Condon. The appellant was satisfied that Form 20 had been checked based on the work he had performed. He approved Form 20 and signed it. Having done that, he reviewed Form 21 with Condon and they agreed that since the activities of Shearson had not changed they should complete Form 21 using the same approach and in the same manner as they did the year before, ie the form to be completed in accordance with the working draft prepared by Condon. As for the other material part of his evidence, it is best to set it out verbatim. He said (in examination-in-chief):

> Having approved Forms 20 and 21, I then discussed with Doug the signing procedure. As I was going to Jurong for a meeting that afternoon and was unlikely to be back in the office, I signed Form 20 which was presented to me at that stage. I also pre-signed Form 21 and gave instructions to Doug to ensure that the blanks in Form 21 were completed in accordance with the draft, checked thoroughly by him before release to the client. After that, Doug took Forms 20 and 21 to his office and he left for a luncheon engagement. In the meantime, the clients were ringing up our office on a fairly regular basis to inquire the status of Forms 20 and 21. Doug's secretary, when Doug was out, went to his office and

saw that both Forms 20 and 21 had been signed without realizing that at that stage, Form 21 was not completed as yet. She took both Forms 20 and 21 and sent them out.

He was cross-examined at some length on this point. The material portions of his evidence are as follows:

Mr Lee: Why was there such a hurry?
Mr Chew: First of all, Mr Lee, the client was already late in submitting forms.
Mr Lee: Your clients were five and a half months late!
Mr Chew: Yes. I mean, they ... last year, they submitted in December. So this year they have done it again in December. They were five and a half months late. Mr Tan brought it up during the meeting. However, the fact remains that they were already late. They were told by MAS that since their licence was going to be renewed in early January, can they have those forms quickly?
...
Mr Lee: But you are already late.
Mr Chew: Yes, I agree. I mean, that's the reason why they have been harassed by MAS and they said, 'Look, can we have them quickly.' So like all clients, we try to help the client to get the thing done quickly to give it to them and it is not as if we are doing an audit where we need to check figures, we need to get confirmation. All this ... the audit has already been done early in the year and we are merely looking at the files, confirm the figures are right and if it is just an administrative and clerical task of making sure that all the figures are checked before we send them.
Mr Lee: Yes, but don't you think as an auditor, as a responsible auditor, your auditor's report is a very important document? Something ... the only document in all the documents, this is the only document where you or your firm put its signature to it.
Mr Chew: I mean, we have signed the audit report, the financial statement. That's the other auditor's report which is already submitted to the client, and which the client has submitted to the MAS. So this is not the only document.
Mr Lee: Are you saying it is not important?
Mr Chew: I did say it's important, not unimportant, Mr Lee.
...
Mr Lee: And yet you would put your signature to it without seeing that it's completed?
Mr Chew: Mr Lee, there were ... the circumstances were, as I had mentioned (a) the client was already late. They asked us whether we could expedite that thing.
Mr Lee: We heard all that. We heard all that.
Mr Chew: No, no, hold on. I reviewed the working backing sheet. I went through with Doug these two sheets of paper, a manager. I went through with him. We also had a look at last year's Form 20. It is not that we are doing it for the first time. We looked at last year's and really when we looked at it, in our view, anyway, most of it, most of the questions here, we do not regard as applicable. So I had gone through the thing. I agreed with the way he has completed it and I agreed that given ... under the circumstances I was agreeable if it wasn't unreasonable for me to pre-sign it but I gave him ... delegate him the responsibility, the clerical and administrative responsibility, ensuring that the form was completed in accordance to what we have agreed and discussed, checked before we released it. I mean, he is a responsible manager. He is a manager in the firm. We are not talking about a junior staff. He is a very senior ... a senior member of staff in the firm.
Mr Lee: But the confidence you reposed in him was totally unjustified?
Mr Chew: Well, I mean, in the circumstances, with hindsight, yes, but I mean, it's something which happened which was something unforeseen.
...
Mr Lee: You agree then that pre-signing is wrong?
Mr Chew: As I mentioned to you, Mr Lee, it depends on the circumstances.
Mr Lee: I can't hear you, sorry.
Mr Chew: It depends on the circumstances of the situation. In this case, I was satisfied that the work had been done. I was satisfied that the backing sheet had been checked. And it is merely a question of delegating the administrative and the clerical task to a manager to make sure that he ensures that the form is typed, checked and sent out. Now, if we are talking about that responsibility cannot be undertaken by a manager, then I don't think anybody is fit to be a manager as a manager does a lot more onerous tasks than just checking the typing.

It does not appear to me that the committee disbelieved the appellant in any way; certainly there was no evidence which was contrary to or inconsistent with what the appellant said. Nor was it suggested that he was not telling the truth.

On the basis of the evidence of the appellant and the two documents produced before the committee, namely, Form 21 as submitted to MAS and the working draft prepared by Condon, two material points clearly emerge. First, Form 21 as submitted to MAS had been partially completed; paras 4 and 5 had been completed, and the names of Shearson and Coopers and the date had been inserted. It is not clear from the evidence whether these two paragraphs were completed by the appellant or Condon; but it appears to me, as a matter of inference, that it was probably the appellant who completed them, as the handwriting thereon was different from that on the corresponding paragraphs in the working draft prepared by Condon. If this inference is correct, it supports the evidence of the appellant that he had reviewed the completion of Form 21 and his attention had been brought to bear on it. Secondly, Form 21 was then left with Condon to complete paras 2 and 3 in accordance with his working draft as instructed by the appellant, in which case all that Condon was required to do would be to insert the additional paragraph as he did in the working draft and then probably delete paras 2 and 3. This seems to me to be a simple exercise to be performed by Condon.

In their grounds of decision the committee appeared to have based their finding essentially on the fact that the appellant signed Form 21 without completing it, leaving it to 'a junior audit manager' to complete it. The relevant part of the grounds of decision of the committee is as follows:

> In his evidence, the respondent said that he received Form 21 on the morning of 9 December 1986 from his client and as he felt it was already late for the submission of the form to the Authority, he asked one of his junior audit managers to complete the form. He knew that the statements appearing in the form have not been completed but he said that he signed it nonetheless because he was in a hurry to attend a meeting that afternoon. It is clear from the exhibit marked 'P1' that the respondent signed the report without it being completed.
>
> The junior audit manager he gave instructions to was one Mr Douglas Condon who was never a member of the Singapore Society of Accountants. Condon had not on any previous occasion completed such a form before. The respondent admitted on cross-examination that he was aware of this fact. He went through Form 21 prepared by Condon. Condon, however, was not called to corroborate this evidence.

It seems to me that the committee did not really take into consideration all the relevant circumstances in which the partially completed Form 21 was signed by the appellant and was left with Condon. This is not a case where the appellant, on receipt of Form 21, signed it and left it entirely to Condon to complete it and thereafter to send it to MAS. He did review the form with Condon and probably completed part of it and gave instructions to Condon as regards the completion of the rest of the form and on that understanding left it to Condon to complete and send to MAS. It seems to me that the committee gave undue emphasis solely on the fact that the appellant signed a form 'in blank' in advance. They said:

> The respondent on cross-examination also admitted that his confidence in Condon was unjustified on hindsight. Signing a report in blank shows a very callous attitude of an auditor towards his responsibility. The respondent himself admitted on cross-examination that it is an extremely dangerous practice as he did not know what he was certifying. The society must view such action with extreme severity.
>
> On her submission counsel for the respondent submitted that it was an administrative slip-up. The submission has no merit. The fact was that the respondent wilfully signed the auditor's report in blank. The explanation offered by the respondent is no justification for his act. If there was any administrative slip-up at all, it was that his juniors did not take such action as he wanted them to conceal the fact that the respondent had signed the auditor's report in blank.

But this is not a case of an auditor 'signing a report in blank'; if it were, it would indeed show 'a very callous attitude of an auditor towards his responsibility'. Nor is it one where the appellant as an auditor was seeking the assistance of his staff 'to conceal the fact that the (appellant) had signed the auditors' report in blank'. In my opinion, the committee was, with respect, in error in their conclusion. On the material before me, I am of the opinion that the submission of the partially completed form to MAS was a case of an administrative slip-up or, what counsel for the appellant before me submitted, a muddle on the part of the staff of the appellant. Of course with the benefit of hindsight and with the disciplinary proceedings against him, the appellant obviously regretted for having signed the partially completed form on that fateful morning of 9 December 1986 and left it to Condon to complete as instructed. The risk of an administrative slip-up or a muddle happening, though remote, was there, and as it turned out it did happen. But, in my view, his conduct should be judged and determined in relation to the time and the circumstances in which he signed the form. Viewed in that perspective, the question simply is this: can it be said that in signing the partially completed form in the circumstances the appellant acted recklessly or rashly without any regard to his responsibility as an auditor, or displayed, in the words of the committee, a 'callous attitude of an auditor towards his responsibility'? I think not.

There is one point that should be borne in mind. It is common ground, and I accept, that Form 21 is an important form to be submitted to MAS. However, it is by no means such a complicated form that the completion of it cannot be properly delegated, in particular in this case, to an audit manager (albeit not a senior audit manager) who is conversant with the accounting records of Shearson. As I have said, Form 21 has only five paragraphs. Paragraph 1 is merely a statement; it is extremely simple and straightforward. Paragraph 2 consists of nine sub-paragraphs, all of which, except the last one, according to Mr Tan of MAS, are not applicable to Shearson and can therefore be deleted. Paragraph 3 consists of eleven sub-paragraphs, six of which, according to Mr Tan, are not applicable to Shearson and again can be deleted. As for the other sub-paragraphs, they can be dealt with by deleting the appropriate words in each sub-paragraph so that in respect of each sub-paragraph either an affirmative or a negative answer is given, and if an affirmative answer is given certain comment or explanation may or would be necessary. According to the appellant, since there had been no change in the activities of Shearson in 1985, the Form 21 filed with MAS the previous year could be followed, in which case the whole of paras 2 and 3 would be deleted as they are not applicable to Shearson and an additional paragraph as written by Condon in his working draft would be inserted. Paragraphs 4 and 5 are again simple and straightforward and can be completed without any difficulty; in the instant case they had been completed – probably by the appellant. Reverting to paras 2 and 3 it is not in issue here whether Mr Tan's view or the appellant's view as regards paras 2 and 3 is correct. Assuming that Mr Tan's view is

correct, it is not a complaint against the appellant that his view or approach in regard to paras 2 and 3 is wrong. In the instant case, once the appellant had reviewed the form and approved the completion thereof, as shown in the working draft, and instructions had been given to Condon for completing it, ie only paras 2 and 3, there is no reason why the actual physical completion could not be delegated to the latter. That was not a delegation to a clerk or typist or the private secretary of the appellant; that was a delegation to an audit manager who is conversant with the financial and accounting records of Shearson. Clearly, that was not a reckless delegation or one which a reasonable accountant would not allow.

I now turn to consider whether as a matter of law what the appellant did, in the circumstances, was an act or default discreditable to an accountant within the meaning of s 33(1)(b) of the Act. The term 'discreditable' has not been defined in the Act and therefore must be accorded the ordinary meaning. In this connection it is helpful to look at the Australian case of *Mercer* v *Pharmacy Board of Victoria*.[2] There, the question was whether a pharmacist was guilty of conduct discreditable to a pharmaceutical chemist under s 96(3)(e) of the Medical Act 1958 of the State of Victoria. Section 96(3)(e) provides:

> If on any inquiry by the Board a pharmaceutical chemist is found –
>
> ...
>
> (e) to have been guilty of any other conduct discreditable to a pharmaceutical chemist or which renders him unfit to be registered as a pharmaceutical chemist –
>
> ...

In construing the words 'conduct discreditable to a pharmaceutical chemist', Pape J said, at p 85:

> In my view 'conduct discreditable to a pharmaceutical chemist' includes any conduct in relation to the carrying on of the business of a chemist which would be reasonably regarded by other chemists of good professional competence as calculated to destroy or lower public confidence in that chemist, or as injuring the credit or standing of the chemist in his professional capacity. I do not think it necessary that his conduct should be dishonest or fraudulent, or that it should involve any moral turpitude. It is enough if it brings discredit on him as a pharmaceutical chemist or on the profession as a whole. Nor do I think it necessarily follows that conduct which is due solely to negligence or inadvertence cannot be said to be discreditable conduct, because the chemist is in a position where his duties are to a large extent laid down by Regulations or by the Act, and where great care is required in the carrying out of those duties and because failure to exercise that degree of care expected of him must necessarily lower public confidence in him and discredit him in the eyes of his professional brethren.

I find this passage apposite and I am in substantial agreement with it. Applying to the instant case the test there laid down, an act or default discreditable to an accountant, in my opinion, includes any conduct which would be reasonably regarded by other accountants of good professional competence as calculated to destroy or lower public confidence in that accountant or lower the credit or standing of the accountant in his professional capacity.

Turning to the instant case, on the basis of the evidence I have examined and discussed, it cannot be said that what the appellant did would destroy or lower public confidence in him as an accountant or injure or lower his credit or standing as an accountant. In my opinion, what he did falls short of the degree of culpability attached to an act or default discreditable to an accountant.

I was referred to the case of *Smith* v *The Royal College of Veterinary Surgeons*[3] which was an appeal to the Privy Council from the decision of the disciplinary committee of the Royal College of Veterinary Surgeons ordering the removal of Smith from the register upon the finding of the committee that he was guilty of disgraceful conduct in a professional respect. In that case, Smith, who was a veterinary surgeon, frequently had occasion to give certificates as to the health and condition of animals and birds. It was his practice when calling upon his clients away from the surgery to take with him a supply of blank sheets of paper headed with his professional address and bearing at their foot his signature, below which were his name and qualifications. When occasion arose he would fill in the blank sheet at his client's premises the appropriate wording of the certificate the client required. On one occasion after he had inspected 100 parakeets at his client's premises he was preparing a certificate on one of the blank forms he had already signed, and in the course of it he was interrupted by an urgent telephone message that his father was seriously injured in an accident. He immediately left without completing the certificate, and left it to his client to complete which turned out to be wrong. This incident formed the subject matter of one charge against Smith. There was another charge and that related to Smith leaving behind at his client's premises a blank form of 'health certificate' bearing his signature. The disciplinary committee found Smith guilty of disgraceful conduct in a professional respect on the two charges. On appeal, the Privy Council held that on the evidence the disciplinary committee was entitled to come to the conclusion that what Smith did in each case amounted to disgraceful conduct in a professional respect.

I do not find *Smith's* case[3] of any assistance to me. The facts were entirely different from those of the instant case. What the appellant here did was certainly far from what Smith did. The appellant did not leave a partially completed report to his client to complete; nor did he sign any report in blank and left it in his client's premises.

For the reasons given above, I allow the appeal and set aside the order of the committee. Even if I am wrong

in the conclusion which I have reached and the decision of the committee that the appellant was guilty of an act or default discreditable to an accountant is correct, I am clearly of the opinion that the punishment meted out to the appellant is manifestly excessive. The committee imposed a maximum suspension of five years on the appellant under s 33(3)(b) of the Act. By any standard, this is totally disproportionate to the conduct of the appellant. In my opinion, taking into account all the relevant circumstances, the imposition of a maximum penalty of $500 under para (c) of s 33(3) would be sufficient and appropriate.

I now turn to the question of costs. Clearly, in view of what I have decided, there should be no order as to costs before the committee. The only question is whether the appellant should be awarded costs of the appeal. I refrain from making this order, and my reason is this. The society has to discharge its duty under the Act; it has not acted improperly or vexatiously as against the appellant. The committee at their inquiry had made a finding and given their decision against the appellant. Upon appeal by the appellant it seems to me that it is incumbent on the society, in this case at any rate, to resist the appeal and present its argument to court to assist the court in arriving at its decision. Having regard to all the circumstances, I make no order as to costs here and below.

Appeal allowed.

Solicitors: *Chor Pee & Co*; *Lee & Partners*.

Reported by *Ng Sheau Jiuan*

Allport Alfred James v Wong Soon Lan

HIGH COURT (SINGAPORE) – DIVORCE NO 593 OF 1987
CHAO HICK TIN JC
7 DECEMBER 1988

Civil Procedure – Order of prohibitory injunction served on respondent – Order not indorsed with penal notice – Whether omission a purely technical one – Whether case can be treated as if no order had been served and execution to be thereby effected under O 45 r 7(6) of the Rules of the Supreme Court 1970 – Rules of the Supreme Court 1970, O 45 r 7(4) & (6)

Family Law – Injunction obtained by petitioner restraining respondent from disposing of sale proceeds of matrimonial property – Order served on respondent but not indorsed with penal notice – Whether omission a purely technical one – Whether case can be treated as if no order had been served and execution to be thereby effected under O 45 r 7(6) of the Rules of the Supreme Court 1970

The petitioner had filed a petition for divorce and was granted a decree nisi. He was earlier granted an ex parte order restraining the respondent from disposing of the proceeds of sale of their matrimonial property and this order was served personally on the respondent. However, the order was not indorsed with the penal notice as required under O 45 r 7(4) of the Rules of the Supreme Court 1970. The respondent failed to comply with the injunction and the petitioner filed an application for committal of the respondent for contempt.

At the hearing, counsel for the petitioner contended that since under O 45 r 7(6) of the Rules of the Supreme Court 1970 a prohibitory injunction may be enforced even though it has not been served provided that the person has notice of the order, it follows that the omission to indorse the penal notice on the order could not be critical and is purely a technical omission. Counsel also contended that the present case might be treated as if no order had been served on the respondent and following r 7(6) execution can be effected.

Held, dismissing the application:

(1) The court's powers to punish any person for civil contempt are quasi-criminal in nature. Where there is prescribed any procedural step to the exercise of that jurisdiction, that rule should be scrupulously observed and strictly complied with.

(2) From O 45 r 7(4) and (6), it is clear that the distinction between a prohibitory injunction and a mandatory injunction lies in the fact that enforcement of a prohibitory injunction may be effected even though personal service of the order has not been effected provided that the person against whom the injunction is made has notice of it. For a mandatory injunction, personal service must be effected before enforcement may be taken. Nothing more should be read into r 7(6). It can in no way be interpreted to excuse the non-compliance of the requirement of the indorsement of a penal notice.

(3) As for counsel's second contention, the fact that the order was served and it was without the penal notice cannot be disregarded. To accept counsel's contention would really amount to saying that an order for a prohibitory injunction need not be drawn up as required by r 7(4) before enforcement may be carried out. The court would in effect be deciding that r 7(4) has no application to a prohibitory injunction which will be in direct conflict with what is stated in r 7(4).

[*Editorial Note*: The petitoner has appealed to the Court of Appeal vide Civil Appeal No 1 of 1989.]

Cases referred to

1 *Husson* v *Husson* [1962] 3 All ER 1056 (distd)
2 *United Telephone Co* v *Dale* (1884) 25 Ch D 778 (distd)
3 *Hampden* v *Wallis* (1884) 26 Ch D 746 (folld)
4 *Stockton Football Co* v *Gaston* [1895] 1 QB 453 (folld)

Legislation referred to

Rules of the Supreme Court 1970 O 45 r 7(4), (6)

Vijay Kumar for the applicant/petitioner.
JS Yeh for the defendant/respondent.

Cur Adv Vult

Chao Hick Tin JC: By this motion the petitioner applies for an order of committal to be made against the respondent on the ground that the respondent has committed contempt of court in disobeying an ex parte order made on 2 April 1987 restraining her from disposing the sum of